IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 431 OF 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KANBI PURIBEN PARMABHAI & ORS. - Petitioner(s)
Versus
DALCHHABHAI BHIKHABHAI - Respondent(s)

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Appearance :
MR. SUTHAR for MR. N.K. MAJMUDAR for Petitioner(s).
Petitioner(s) : 3- DELETED
MR. D.K. ACHARYA for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 18/12/2006

ORAL JUDGMENT

By the present petition, the petitioners seek to challenge the Order dated 6th December, 1988 passed by the Gujarat Revenue Tribunal in Revision Application

No.10.B.A.276/85 under which it had reversed the order passed by the Mamlatdar and the order passed by the first Appellate Authority.

2. The short facts leading to the present Writ Application are that the respondent claiming to be a permanent tenant made an application on 31st August, 1972 under Section 29 of the Bombay Tenancy & Agricultural Lands Act, 1948 ["the Act" for short], read with Rule 14 of the Rules framed thereunder, submitting, *inter alia*, that he was a tenant on 1st April, 1957 and he is to be deemed to be a purchaser and would be entitled to purchase the land under Section 32 of the Act. It was submitted by him that he was the tenant of one Ramaben, widow of Kanji Bechar; said Ramaben expired on 14th January, 1971, but, immediately thereafter, armed with a gift deed executed somewhere in the year 1966, the said tenant was dispossessed by the donees with the help and assistance of their people. Subsequent thereto, the tenant-respondent made an application for withdrawal of the main application; despite opposition by the present petitioners, the Mamlatdar allowed the said application to be withdrawn. Thereafter, the respondent-tenant made yet another application on 18th October, 1973 under Section 32(1B) of the Act praying, *inter alia*, that he

has been illegally dispossessed after the death of the land holder, he is entitled to possession and a declaration in his favour that he is to be deemed to be the purchaser.

2.1 The application was opposed by the present petitioners on many counts, including the question of limitation, question of *res judicata* and execution of the gift deed.

2.2 On the first occasion, the application was allowed and the appeal against the same was dismissed, but, on a revision to the Gujarat Revenue Tribunal, the learned Tribunal remanded the matter back to the Mamlatdar. This time again the Mamlatdar rejected the application, but, in the appeal by the tenant, the Collector set aside the order and remanded the matter back to the Mamlatdar with a direction that he should adhere to the orders of the remand made by the learned Revenue Tribunal.

2.3 In the final round, the Mamlatdar rejected the application and the order was confirmed in the appeal. The tenant-respondent took up the matter before the Tribunal. This time, the Tribunal allowed the Revision

Application and held against the interest of the present petitioners; being aggrieved by the said judgement, the petitioners are before this Court.

3. Shri Suthar, learned Counsel for the petitioners, submits that withdrawal of the application, which was earlier filed under Section 29 of the Act would amount to *res judicata* and as the application was not filed within two years from the date of dispossession, which, according to the petitioners, was somewhere in the year 1966, the application was barred by limitation and lastly, that in view of the gift deed, the petitioners have become absolute owners of the property and within two years from the date of execution of the gift deed, the application had not been filed.

4. On the other hand, Shri Acharya, learned Counsel for the respondent-tenant, placing reliance upon certain judgements of this Court, submits that withdrawal or rejection of the application filed under Section 29 of the Act would not come in the way of the Mamlatdar if he proposed to exercise powers vested in him under Section 32(1B) of the Act. His further submission is that if the dispossession as alleged by the tenant or surrender as alleged by the landlord is contrary to Section 29, read

with Section 15, of the Act, it would not be deemed to be a surrender and the tenant's right would continue. He also submits that creation of the gift deed by Ramaben in favour of her own daughters would speak for itself and would clearly show that to avoid conferral of rights on the respondent-tenant, such a device was manufactured.

5. Section 32(1B) of the Act reads as under:

> *"32(1B) Where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor in interest on the said date and such land or part thereof is not put to a non-agricultural use on or before the said date, then the Mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or, as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, his successor in interest, and shall be restored to the tenant; and thereafter, the*

provisions of this section and sections 32A to 32R (both inclusive) shall, so far as they may be applicable, apply thereto, subject to the modification that the tenant shall be deemed to have purchased such land or part thereof on the date on which such land or, as the case may be, part thereof is restored to him:

Provided that the tenant shall be entitled to restoration of land or part thereof, as the case may be, under this sub-section only if he gives an undertaking in writing within such period as may be prescribed to cultivate it personally and of so much thereof as together with the other land held by him as owner or tenant shall not exceed the ceiling area

Provided further that -

(i) if the tenant fails to give such undertaking within such prescribed period, or if the tenant, after giving such undertaking, refuses to accept the tenancy or possession of the lands, the land the possession of which the landlord or, as the case may be, his successor-in-interests is not entitled to retain under this sub-section; or

(ii) if the tenant gives such undertaking and accepts such tenancy or possession of the land, such portion of the land referred to in clause (i) to the restoration of which the tenant would not be entitled under the first proviso,

> *shall vest in the State Government free from all encumbrances, and shall be disposed of in the manner provided in sub-section (2) of section 32P.”*

It clearly provides that the tenant, who was earlier dispossessed, may make an application within the period prescribed (within one year) or in the alternative, the Mamlatdar shall notwithstanding anything contained in Section 29 or any other provision of the Act, *suo motu* hold inquiry and may direct that such land, etc., be restored to the tenant.

6. In the matter of ***Rasulmiya Rehmanmiya vs. Patel Lalabhai Shankerbhai***, [***AIR 1984 Gujarat 27***], it has been observed that if the tenant's application under section 32(1B) of the Act is barred by limitation, but, the Mamlatdar proposes to proceed with the application, then, the presumption would be that he had exercised his *suo motu* powers and such exercise of powers is not fettered by the law of limitation. From that judgement, it would clearly appear that filing of the application to the Mamlatdar, is a reminder to him to exercise his *suo motu* powers and if that be so, the question of limitation of one year from the date of insertion of Section 32(1B) of

the Act or within two years from the date of dispossession, would all lose importance.

7. Applying the said judgement, it can again be observed that if the Mamlatdar has to exercise his powers notwithstanding anything contained in Section 29 or any other provision of the Act, then, the question of *res judicata* would also not arise because withdrawal of application under Section 29 of the Act would not affect, curtail or limit the jurisdiction of the Mamlatdar.

8. So far as the question of execution of the gift deed is concerned, the same would not strengthen the case of the petitioners because whenever a property is gifted, sold or alienated by the owner in favour of a third party, then, the property passes with the charge. In the present case, even otherwise the gift deed has not been proved in accordance with the provisions contained in the Evidence Act, 1872 and the Transfer of Property Act, 1882. Neither the present petitioners have appeared in the witness box to say that on execution of the gift deed, they had accepted or acknowledged the possession, nor attesting witnesses have been examined to prove the attestation by saying that each of the witnesses had seen the executant signing in their presence and each of the

witnesses had signed in presence of the executant. If the gift deed is inadmissible in evidence, then, it would have no effect.

9. Taking into consideration the totality of the circumstances and the legal position, I am of the opinion that no relief can be given to the petitioners. The Writ Application deserves to and is, accordingly, dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

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